

Chapter V

Environmental

I. Introduction

All HOME projects, and projects funded with program income generated from HOME projects, must comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the implementing regulations (24 CFR Part 58) commitment and expenditure of HOME funds. The regulations can be found on the internet at <http://www.hud.gov/offices/cpd/energyenviron/environment/lawsandregs/regs/part58/index.cfm#subparta>.

The purpose of the environmental review is to inform the public of the following:

1. The positive and negative impacts of the site and effects created by the proposed action;
2. The means to mitigate negative impacts;
3. The alternatives to the project if needed; and
4. When all other options fail, that rejection of the proposed action may be the most prudent action to take.

The NEPA regulations state that the environmental review process should begin as soon as you determine the use of federal funds in the proposed activity. Many State Recipients and CHDOs do not provide sufficient time for the environmental process to be completed prior to the need to draw down HOME funds. New construction of rental housing developments and single-family subdivisions commonly require approximately six months to complete the NEPA process from the time of analysis, research, report preparation, comment from oversight agencies such as the State Historical Preservation Officer (SHPO), mandated public comment/objection periods, and final review by Department of Housing and Community Development (HCD) or the Department of Housing and Urban Development (HUD). Useful websites are available at the end of this chapter to assist you.

HOME projects may also be subject to other local and State environmental requirements; however, you are responsible for ensuring those requirements are satisfied. Although this chapter summarizes the NEPA process, it is necessary for you to be familiar with the requirements of the implementing environmental regulations.

Do not conduct choice limiting actions prior to the completion of the NEPA review. Some examples of choice limiting actions are: excavation, filling, construction, rehabilitation, or making a commitment or expenditure of HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair, or construction. Option

agreements on a proposed site or property are allowable prior to the environmental review if the agreement is subject to the determination of the environmental review. However, HUD allows you to conduct actions prior to the pursuit of federal assistance like HOME or CDBG funds.

Unless the activity is exempt, as defined in the NEPA regulations, the NEPA regulations prohibit the commitment of HUD funds until the environmental requirements are satisfied. In addition, since many HOME projects are also financed with non-HUD funds, keep in mind that the NEPA regulations prohibit the commitment of **non-HUD** funds if the activity would have an adverse environmental impact or limit the choice of reasonable alternatives.

II. Environmental Responsibilities

1. HCD's Role in CHDO Projects

Designated by the HUD as a "Participating Jurisdiction," HCD assumes the responsibility for the environmental review in CHDO projects. HUD's designation of HCD as the "Responsible Entity" charges it with performing three roles in the NEPA environmental review process: environmental review preparer, reviewing agency, and appeals officer.

- A. Environmental Review Preparer: HCD will work with the CHDO in your preparation of all NEPA environmental review documents and notices, contacting the State Historic Preservation Officer (SHPO), and obtaining HUD's final approval.
- B. Reviewing Agency: HCD will review environmental packages and draft legal notices prior to publication in a newspaper of general local circulation. All final packages, including the proof of publication, must be reviewed and adopted by HCD. HCD will review the documents to be executed by the State's Certifying Officer, and then HCD will send the necessary documents to HUD for final approval. HCD will provide confirmation of NEPA clearance when HCD receives it from HUD.

If a local government has already prepared an environmental review of the same project activities and site for another program, HCD may review and adopt the local review, if adequate. Final HUD approval will still be required. If the use of HOME funds was adequately addressed in the locality's newspaper publication, republication may not be required, thereby saving valuable processing time and additional cost. If not, publication of a separate notice will be required.

- C. Appeals Officer: HCD will ensure that HOME-funded projects comply with the provisions of NEPA and the related federal laws. HCD will consider any comment prior to the submission of the Request for Release of Funds (RROF) to HUD during the mandated public comment period.

2. The CHDO Role

While HCD is ultimately responsible for the completion of the environmental process and all publishing, the preparation responsibility is typically delegated to the CHDO. In this capacity, the CHDO may complete the NEPA review, or work in cooperation with HCD to complete the NEPA review by collecting and preparing the necessary environmental documentation for the ERR which for CHDO projects, is located at HCD. The CHDO sends the documentation to HCD for review and inclusion in the ERR.

3. The State Recipient's Role and HCD's Role in State Recipient Programs/Projects

A State Recipient receiving HOME funds from HCD is the Responsible Entity (RE) and assumes HUD environmental responsibilities in accordance with 24 CFR Part 58. The RE's Certifying Officer is the Chief Elected Official of the State Recipient. The Certifying Officer role may only be delegated by Resolution of the Governing Body; and, may only be delegated to a direct employee of the State Recipient. The Certifying Officer assumes the role of the "federal official" for NEPA compliance and is subject to the jurisdiction of the federal courts in matters related to the environmental review of HOME projects.

The RE is responsible for the completion of all parts of the environmental review and following all the processes and procedures identified in 24 CFR Part 58. HCD will not review or approve the RE's environmental findings. HCD will assume that the RE's certification is valid pursuant to Part 58.72 and approve the Request for Release of Funds unless there is an objection or HCD knows that the RE has not complied with Part 58.75 or the RROF and Certification are inaccurate. HCD will consider objections to RE's Request for Release of Funds and Certification if it determines any of the 6 conditions described in Part 58.75 exist. HCD will subsequently monitor the State Recipient's Environmental Review Record for compliance with the HUD 24 CFR Part 58 requirements. Monitoring findings may contain substantial penalties.

The State Recipient shall begin the environmental review process at the earliest possible time so that potential conflicts between program procedures and environmental requirements are identified at an early stage. **Therefore, the environmental review process should commence as soon as a proposed site is identified.**

III. Environmental Review Process

Step 1. Establish and maintain the Environmental Review Record.

The Environmental Review Record (ERR) should be complete for each HOME project and project group. It is your responsibility that the record:

1. Describes the specific activities of the project or project group;
2. Identifies the person completing each document and the environmental Certifying Officer for the project. Also ensure the designee is the authorized Certifying Officer for your community. For CHDOs, the Certifying Officer is a designee in HCD;
3. Contains supporting evidence and all relevant documents, notices, determinations, and information for the environmental review. The documentation signed by the Certifying Officer should clearly specify the level of environmental clearance for the project; and
4. Is available for public review.

Step 2. Aggregate activities <u>and define the project.</u>

For an environmental review, a project is defined as the following:

“An activity, or group of integrally related activities, designed...to accomplish, in whole or in part, a specific objective.”

The definition of an activity is:

“An action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.”

The environmental review process includes a determination of the impact of a project on the environment and the impact of the environment on the project. In this regard, the review should document an evaluation of the physical, social, and economic impacts of the proposed activities. The environmental review process must consider the ultimate effect of the proposed project and geographically or functionally related project activities regardless of the financing source of each activity.

Example 1:

If HOME funds are used to acquire a site for a new rental construction project, the ultimate effect of the project is not solely the site acquisition, but also the construction of the project and infrastructure. Therefore, the environmental review must address the impacts of both the HOME-funded land acquisition and the privately financed construction of the project.

Example 2:

HOME funds will finance only the downpayment assistance of a 50 unit, new construction first-time homebuyer program in a new subdivision. Although the HOME program finances only the downpayment assistance, the environmental review must consider the environmental effects of the new construction of 50 homes in the subdivision.

Example 3:

The HOME program will finance an owner-occupied rehabilitation program started in three neighborhoods last year. This year the program will include a fourth neighborhood not originally considered. Although the rehabilitation program is a continuation from the previous year, the environmental review needs to be expanded to consider the environmental impacts in the fourth neighborhood since it was not a part of the original scope of review. For all four neighborhoods, individual site-specific reviews will continue to be required to assure compliance with requirements governing historic preservation, airport clear zones, explosive and flammable operations, toxic chemicals and radioactive materials.

Step 3. Determine the level of environmental clearance and prepare the appropriate documentation.

After you have identified your project, you must determine the applicable level of clearance and take the required procedural steps (see Appendices V-A9-22 and V-A9-23).

You must identify the project-specific characteristics, aggregate all related activities of the project regardless of funding source, and consider the surrounding conditions of the environment to the project.

Common Question 1: What are the 24 CFR Part 58.6 environmental requirements? Do they apply to my project?

Answer:

The environmental requirements of 24 CFR Part 58.6 apply to all HOME projects regardless of the level of clearance. These requirements are related to the Flood Disaster Protection Act, the Coastal Barrier Resources Act, and the Airport Runway Clear Zone and Clear Zone Disclosures laws.

If the property is located in a runway clear zone or clear zone, as defined, it is your responsibility to notify and ensure the buyer signs an acknowledgment:

1. That the property is located in a runway clear zone or clear zone;
2. What the implications of such a location are; and
3. The possibility that the airport operator may acquire the property.

To comply with Section 58.6, the following documents must be maintained:

- Complete the HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6 (Appendix V-A5) for each project.
- Keep a copy for your ERR.
- Submit the form to HCD with the other required documents appropriate to the level of clearance.

Common Question 2: What are the levels of clearance and how do I select the correct one for my housing activity?

Answer:

Ranked from lowest to highest environmentally impacting, the levels of clearance are:

1. Exempt (§58.34)
2. Categorically excluded not subject to §58.5 [§58.35(b)]
3. Categorically excluded subject to §58.5 [§58.35(a)]
4. Environmental assessments (§58.36)
5. Environmental impact statement determinations (§58.37)

Most housing activities fit in the following levels of clearance on Chart 1. However, particular features of your activity may change the correct level of clearance. Verify with your HOME representative to confirm the level of clearance on Chart 1, particular to your project or program.

Chart 1

HOME Housing Activity	Level of Clearance
Single-family	
Down payment assistance to purchase existing houses	Categorically excluded not subject to Sec. 58.5
Down payment assistance with new construction (infill or 4 units or less)	Categorically excluded subject to Sec. 58.5
Down payment assistance with new construction (5+ units within 2000 feet or housing subdivisions)	Environmental assessment
Acquisition and minor rehabilitation	Categorically excluded subject to Sec. 58.5
Minor rehabilitation	Categorically excluded subject to Sec. 58.5
Major rehabilitation or reconstruction	Categorically excluded subject to Sec. 58.5 (if there are no more than 4 housing projects in the same area). If there are 5 or more projects, the level of clearance is an environmental assessment.
Multi-family	
New construction	Environmental assessment
Major rehabilitation or reconstruction	Environmental assessment
Minor rehabilitation	Categorically excluded subject to Sec. 58.5
Acquisition of an existing structure or vacant land	Categorically excluded subject to Sec. 58.5
Tenant-based rental assistance	Categorically excluded not subject to Sec. 58.5

Common Question 3: What is acceptable documentation to substantiate environmental determinations?

Answer:

HUD allows several forms of documentation such as: field observation, personal contact, printed materials, reviewer's experience, special study, and consultation with oversight agencies.

Although any of these forms is allowable, experience in the HOME Program demonstrates that selecting the best form of documentation with the compliance factor is more defensible when projects are publicly contested during the environmental review.

For example, environmental assessments often rely too heavily on "reviewer's

experience” or “personal contact” as supporting documentation. However, some assessments don’t contain information of the person’s qualifications to make these determinations, nor do they list the name, title, and date of the conversation.

Several environmental factors are better supported when printed materials (e.g. maps or lists) are reviewed, cited, and attached. Some factors require consultation with oversight agencies (e.g. historic preservation or endangered species) and a letter from the applicable agency is the best documentation. Read the forms carefully to find specific instructions about supporting documentation.

Common Question 4: What historical data is required to submit to the State Historical Preservation Officer (SHPO) under NEPA?

Answer:

The federal historic preservation analysis (aka a Section 106 review) is required for most HOME activities except for tenant-based rental assistance, homeowner downpayment assistance in scattered sites in a locality, and minor rehabilitation that excludes exterior work or is performed on buildings less than 50 years old.

Although historic and cultural information collected for the California Environmental Quality Act (CEQA) compliance is useful, satisfying the historic preservation requirements under NEPA is significantly different. **In most cases, it involves submitting historical data to SHPO located in the State Department of Parks and Recreation for comment. For this reason, HCD highly recommends that you research the required historic information of your project early in your environmental review.**

A historical review that is comprehensive and meets the federal requirements is substantiated by soliciting and receiving historical information from:

1. The applicable state university on the California Historical Resources Information System (CHRIS) contact list. Their website is www.chris.ca.gov.
2. Federally mandated “consulting parties” which include the local government where the activity is located, Indian tribes/organizations that attach “religious and cultural significance” to the project site, and the public. You must provide the public with “information about an undertaking and its effects on historic properties and seek public comment and input” (36 CFR Part 800.2c). Solicitation can include notices to adjacent neighbors and newspaper notices.
3. An internet search of the National Register of Historic Places found at <http://www.nr.nps.gov/>.

4. A historical resource study and/or a Phase I Site Assessment of the area of potential effects containing maps, pictures, and a thorough discussion of past uses and existing buildings within the subject area.

More information regarding documentation standards can be found in 36 CFR Part 800.11 found at www.achp.gov/regs.html.

After you have collected your historic information, you are required to make a finding of either:

- 1) No historic properties affected (the most common finding);
- 2) No adverse affect; or
- 3) Adverse affect.

In addition, federal law requires you to submit your finding to SHPO for comment. Providing historic information to SHPO without a finding or making a finding without documentation does not comply with the NEPA requirements.

According to 36 CFR Parts 800.4 and 800.5, SHPO must be allowed 30 days from their time of receipt of “an adequately documented finding” from the Responsible Entity to comment on the proposed action. If the information is inadequately documented, then SHPO will inform the Responsible Entity and is still allowed 30 days to review and comment.

Under NEPA, State Recipients make the relevant finding, provide a copy of the collected historical information to SHPO, and request SHPO to comment on the finding. For CHDOs, HCD makes the finding and provides all information to SHPO. **CHDOs and Administrative Subcontractors must not send information directly to SHPO.**

Common Question 5: What is the correct level of clearance for a first-time homebuyer (FTHB) program?

Answer:

If the FTHB program involves existing housing or housing “under construction,” then the locality can use the “categorically excluded not subject to §58.5.” level of clearance. According to HUD, a house “under construction” must have a foundation when the potential homebuyer applies for HOME assistance. Under these situations, there is no change in character of the housing and environment. Therefore, the “categorically excluded not subject to §58.5” is appropriate. Down payment assistance in a new subdivision where the HOME-assisted lot does not have a foundation in place when the applicant applies to the housing program cannot qualify under this level of clearance.

If the FTHB program involves rehabilitation or construction of single-family houses in the locality, then the “categorically excluded subject to §58.5” clearance is correct. However, no more than four (4) houses may be concentrated within 2000 feet of each other in order to remain in this level of clearance. HUD considers five (5) or more houses

within 2000 feet of each other as being potentially significant; if this is the case, the environmental assessment level of clearance is correct.

If the FTHB program involves rehabilitation in an area with five or more HOME-assisted houses or construction in a typical new subdivision, then the environmental assessment is required. In these instances, the land use is changed from a condition of raw land (although residentially zoned) to new houses, and the density between the HOME-assisted homes is closer than 2,000 feet. The 15-day public comment and 15-day public objection periods must be completed in this level of clearance prior to issuing our environmental clearance approval letter. If a prior environmental assessment form for the same area and activity has been completed, then an environmental assessment is not required unless it is more than three years old. In which case, the original assessment should be reevaluated.

It is incorrect to believe that if HOME finances only the acquisition of the property, then the environmental effect is minimal and the project is exempt. NEPA clearly states that it is the aggregation of all individual activities even those not HUD-assisted that determines the correct environmental review process for a proposed program or project.

Levels of Clearance and Required Documentation

1. Exempt (§58.34)

The following activities and projects consisting solely of these housing activities are exempt from NEPA:

- Information and financial services such as continuing services for affirmative marketing and fair housing;
- Administrative and management activities;
- Engineering and design costs incurred for an eligible HOME activity; or
- Any of the categorical exclusions listed in 58.35(a) provided that there are no circumstances that require compliance with any other federal laws and authorities cited in §58.5. An example of this is marking all “A’s” on the compliance factors listed in the Statutory Worksheet (Appendix V-A8).

Environmental Procedures

1. Prepare an "Environmental Finding Form" (Appendix V-A4).

2. Complete the “HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6” (Appendix V-A5).
3. Submit the forms to HCD for review and approval. No public notices are required.
4. Keep in your files the documentation and the NEPA clearance letter from HCD.

2. Categorically excluded not subject to §58.5 [§58.35(b)]

Your project falls into this category if it is any of the following housing activities:

- Tenant-based rental assistance;
- Activities to assist homeownership of existing dwelling units or dwelling units under construction including closing costs and downpayment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property; or
- Affordable housing predevelopment costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a direct physical impact on the environment.

For the purpose of this level of clearance, HUD defines “under construction” as follows:

“The condition when at least the housing foundation is in place at the time of the buyer’s application to the housing program”.

Environmental Procedures

1. Prepare an "Environmental Finding Form" (Appendix V-A4).
2. Complete the “HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6” (Appendix V-A5).
3. Submit the forms to HCD for review and approval. No public notices are required.
4. Keep in your files the documentation and the NEPA clearance letter from HCD.

Helpful Hint: To streamline the NEPA documentation in housing programs.

Complete an original Environmental Finding Form and the HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6 for the entire housing program if the housing assistance to every project in the program and the environmental conditions for the area to be served are identical (e.g. no mixing of

acquisition/rehabilitation assistance with acquisition-only assistance for existing housing, all HOME-assisted homes are outside the floodplain). Keep a copy of the original with each HOME-assisted project file. If the housing assistance or the environmental conditions are not identical in the program, original, site-specific documentation is required.

3. Categorically excluded subject to §58.5 [§58.35(a)]

The following housing activities are categorically excluded from NEPA but may be subject to review under authorities listed in §58.5:

- a. Activities related to the removal of architectural barriers to the mobility or accessibility of elderly and handicapped persons.
- b. The rehabilitation of single-family or multi-family residential buildings when the following conditions are met:
 - 1. Unit density is not changed by more than 20%;
 - 2. The project does not involve changes in land use from residential to non-residential; and
 - 3. The estimated cost of rehabilitation is less than 75% of the total estimated cost of replacement after rehabilitation;

For the purposes of a NEPA review, a project is considered “minor rehabilitation” if all of these conditions are satisfied. When repairing houses in a floodplain, please note the different definition of “substantial rehabilitation” in the Floodplain Management regulations in 24 CFR Part 55.2 (a)(8) (see V-23-3). Homes that do not meet this definition are exempt from federal floodplain requirements and do not require flood insurance (see V-23-4).

- c. An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site;

Example 1:

A city repairs or constructs adjacent single-family houses in infill lots where the total number of assisted houses in the affected area of consideration is four or less.

Example 2:

A city proposes to provide homebuyer down payment assistance and construct six houses in a neighborhood. The houses are within

2000 feet of each other. This action does not fit this level of clearance. Because the total project consists of more than 4 houses, the 2000-foot spacing requirement applies, and an Environmental Assessment is required. If the project consisted of only four single-family homes, then this level of clearance would be appropriate.

- d. Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use; or
- e. Combination of the above activities.

Environmental Procedures

1. Complete a "Statutory Worksheet" (Appendix V-A8) or
2. Complete the "Minor Rehabilitation Environmental Review" (MRER) (Appendix V-A6) for tiered reviews of rehabilitation housing programs. For more information regarding tiering, see the regulations at 24 CFR Part 58.15. The regulations can be found on the internet at <http://www.hud.gov/offices/cpd/energyenviron/environment/lawsandregs/regs/part58/index.cfm#subparta>.

Helpful Hint: When choosing between the Worksheet and MRER, consider that:

- The Statutory Worksheet is prepared for major rehabilitation projects or project-specific environmental reviews in a non-tiered review;
- The Statutory Worksheet has more environmental statutes and will require greater research;
- The MRER is completed in two phases (i.e. a tiered review);
- The MRER will require the public notification process because it is designed to analyze the impacts of a housing program;
- The MRER is used for specific types of minor rehabilitation (see form instructions) and cannot be used for projects involving changes of use, new construction, reconstruction, or acquisition/rehabilitation of an entire multi-family building.

Conducting a tiered review with the MRER form

1. Complete the MRER (Parts I and II);
2. Disseminate and/or publish a NOI/RROF (Appendix V-A10 for State Recipients; or Appendix V-A12 for CHDOs) in a local newspaper of general circulation. If a newspaper is unavailable, then post the notice in the local post office

and in other prominent public places such as city hall, library, or community center. In addition, send copies to interested individuals and groups, local news media, appropriate local, State, and federal agencies, regional Environmental Protection Agency offices, adjacent landowners, organizations, and HCD. You may provide an advance copy of the notice to HCD for our review and comment prior to publishing. To assist you in correctly identifying the appropriate public comment and objection periods, please refer to the sample publication, comment, and objection period schedule (Appendix V-A14).

3. Complete and send the Request for Release of Funds and Certification (RROF) (Appendix V-A7) with a copy of the proof of publication of the NOI/RROF to HCD to begin the 15 day public objection period. For CHDOs, HCD forwards a copy of the RROF and Notice to HUD. The RROF must be signed by the Certifying Officer.

Helpful hint: Reducing delays in the public objection period

Submit the RROF (Appendix V-A7) to HCD before the date shown in the notice of when the request for the release of funds will be submitted to HCD/HUD.

After the 7-day public comment period for newspaper publications or 10-day period for mailed/posted notifications, HUD/HCD will allow an additional 15 days for public objections prior to processing your RROF, making a total 22-day comment and objection period. **The 15 days begin on the date HUD/HCD receives the RROF or the time period specified in the public notice, whichever is later.**

4. Wait for the HCD environmental clearance after the public objection period ends.
5. After you have identified a house to be assisted in the housing program, prepare and submit the site-specific environmental analysis (MRER Appendix A) to determine if the project requires formal compliance with other environmental laws such as historic preservation, explosive & flammable operations, or toxic substances & radioactive materials. Formal compliance may require formal consultation, a permit, an agreement, or actions to mitigate an adverse effect on protected resources.
6. Follow these instructions after completing the MRER Appendix A for each HOME project in the housing program:

If the project does not require formal compliance in a tiered review, you may convert the project to exempt status [§58.34(a)(12)] and then:

- Prepare an "Environmental Finding Form" (Appendix V-A4) and

identify the project as “Categorically excluded subject to §58.5 statutes per 24 CFR Part 58.3(a), but converted to exempt.”

- Complete the HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6 (Appendix V-A5).
- Send the above forms and the MRER Appendix A to HCD for review and approval.
- Keep in your files the above forms, the completed MRER (Parts I to VI), and any other review notes and HCD’s environmental approval letter.

If the project requires formal compliance in a tiered review, then:

- Complete the additional environmental processes according to the MRER Appendix A instructions.
- Prepare an "Environmental Finding Form" (Appendix V-A4) and identify the project as “Categorically excluded subject to §58.5 statutes per 24 CFR Part 58.3(a)”.
- Complete the HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6 (Appendix V-A5).
- Send the above forms and the MRER Appendix A to HCD for review and approval.
- Keep in your files the above forms, the completed MRER (Parts I to VI), and any other review notes and HCD’s environmental approval letter.

Using the Statutory Worksheet

The Worksheet, not the MRER, must be used when conducting major rehabilitation on single-family homes, acquisition/rehabilitation of multi-family projects, and rehabilitation of multi-family projects. The Worksheet requires you to determine formal compliance with several environmental laws listed in 24 CFR 58.5. Formal compliance may require formal consultation, a permit, an agreement, or other actions to mitigate an adverse effect on protected resources. To begin your review:

1. Complete the Worksheet following the instructions (Appendix V-A8-3). If you have marked all “A”s in the Status column on the Worksheet, you have not triggered formal compliance with the related environmental statutes.
2. Prepare an "Environmental Finding Form" (Appendix V-A4) and identify the project as “Categorically excluded subject to §58.5 statutes per 24 CFR Part 58.35(a), but converted to exempt status.”
3. Complete the HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6 (Appendix V-A5).
4. Send the above forms to HCD for review and approval.

5. Keep in your files the above forms and any other review notes and HCD's environmental approval letter.

If you have marked any "B" under the Status column on the Worksheet, you have triggered formal compliance requirements. You are then required to:

1. Follow the compliance instructions of the Worksheet for each environmental law marked with a "B".
2. Disseminate and/or publish a NOI/RROF (Appendix V-A10 for State Recipients; or Appendix V-A12 for CHDOs) in a local newspaper of general circulation.

If a newspaper is unavailable, then post the notice in the local post office and in other prominent public places such as city hall, library, or community center. In addition, send copies to interested individuals and groups, local news media, appropriate local, State, and federal agencies, regional Environmental Protection Agency offices, adjacent landowners, organizations, and HCD. You may provide an advance copy of the notice to HCD for our review and comment prior to publishing. To assist you in correctly identifying the appropriate public comment and objection periods, please refer to the sample publication, comment, and objection period schedule (Appendix V-A14).

3. Complete and send the Request for Release of Funds and Certification (RROF) (Appendix V-A7) with a copy of the proof of publication of the NOI/RROF to HCD to begin the 15 day public objection period. The RROF must be signed by the Certifying Officer.

Helpful hint: Reducing delays in the public objection period

Submit the RROF (Appendix V-A7) to HCD before the date of the request for the release of funds shown in the notice. For CHDOs, HCD forwards a copy of the RROF and Notice to HUD.

After the 7-day public comment period for newspaper publications or 10-day period for mailed/posted notifications, HUD/HCD will allow an additional 15 days for public objections prior to processing your RROF, making a total 22-day comment and objection period. **The 15 days begin on the date HUD/HCD receives the RROF or the time period specified in the public notice, whichever is later.**

4. Prepare an "Environmental Finding Form" (Appendix V-A4) and identify the project as "Categorically excluded subject to §58.5 statutes per 24 CFR Part 58.35(a)."
5. Complete the HUD Environmental Form for Statutes and Regulations

at 24 CFR Part 58.6 (Appendix V-A5).

6. Send the above forms to HCD for review and approval.
7. Keep in your files the above forms and notice, distribution list, proof of publication, any other review notes and HCD's NEPA clearance letter from HCD.

4. Environmental Assessments (§58.36)

If your project is not exempt or categorically excluded from NEPA, then an Environmental Assessment (EA) is required to evaluate the environmental impacts of the project. An EA is not the same as a Phase I Site Assessment, CEQA Initial Study, nor a HUD environmental review under 24 CFR Part 50 for HUD Section 202/811 projects although much of the information gathered in those analyses may be used to complete the EA.

Environmental Procedures

1. Prepare an "Environmental Finding Form" (Appendix V-A4).
2. Complete the HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6 (Appendix V-A5).
3. Prepare the EA (Appendix V-A3) (§58.40) in accordance with Part 58 Subpart E to include these components: identification of grantee and address; description of the project; determination of existing conditions and trends; identification of project impacts with the federal environmental factors and standards; discussion of project alternatives, project modifications considered, and the no action alternative; discussion of mitigation measures to the project; and list of sources, agencies, and persons consulted. The person designated as the Certifying Officer must sign the EA.
4. Send a copy of the Environmental Finding Form, HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6, and the EA to HCD. **For State Recipients, complete and retain the forms in the official environmental record in your office. Only send the "Environmental Finding Form" and the "HUD Environmental Form for Statutes and Regulations at 24 CFR Part 58.6" to HCD.**
5. The EA results in either: 1) a Finding of No Significant Impact (FONSI), or 2) a Finding of Significant Impact.

Finding of No Significant Impact (FONSI). Most HOME projects will probably have a finding of no significant impact because they usually do not constitute major federal actions. The next step is the required 15-day public comment and the 15-day public objection periods, totaling 30 calendar days. If you have a FONSI you need to take the following steps:

- a. Combined Notice/Public Comment Period. In accordance with

§58.43, disseminate and/or publish in a general circulation newspaper, a combined notice of “FONSI/Notice of Intent to Request Release of Funds” (Appendix V-A11 for State Recipients; Appendix V-A13 for CHDOs). If a newspaper of general circulation is unavailable in your community, then post the notice in the local post office and other general public places. In addition, send copies of the FONSI (with the EA attached) to interested individuals and groups, local news media, appropriate local, State, and federal agencies, regional Environmental Protection Agency offices, adjacent landowners, organizations, and HCD. Provide 15 calendar days after the date of newspaper publication or 18 calendar days for mailed/posted notices for public comment. To assist you in correctly identifying the appropriate public comment and objection periods, please refer to the sample publication, comment, and objection period schedule (Appendix V-A14).

- b. Request for Release of Funds and Certification/Public Objection Period. Complete and send your RROF to HCD (Appendix V-A7) with a copy of the Combined Notice and proof of publication. The person designated as the Certifying Officer must sign the RROF.

Assuming all public comments have been addressed, the 15-day public objection period begins on the date HUD/HCD receives the RROF or the time period specified in the public notice, whichever is later. For CHDOs, HCD will transmit the RROF, Combined Notice and proof of publication to HUD to begin the objection period. After the prescribed 15-day public objection period and all public objections have been addressed, HUD/HCD can approve the release of funds.

In your environmental file, keep copies of the activity description, EA, the Combined Notice, any written comments and your response to them, the RROF, and the NEPA clearance letter from HCD.

A Finding of Significant Impact. When the HOME project will significantly affect the quality of the human environment, an Environmental Impact Statement (EIS) must be prepared.

5. Environmental impact statement determinations (§58.37 and Subpart F or G of 24 CFR Part 58).

Most HOME funded projects do not require an EIS because they do not have a “potentially significant impact on the human environment.” If you have determined that an EIS is required, please contact your HOME Representative.

Step 4. Wait for environmental approval from HCD.
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For State Recipients, HCD will provide you a letter attached with the Authority to Use Grant Funds (Appendix V-A1) verifying that the HOME project has satisfied the environmental requirements after any applicable public objection period expires.

For CHDOs, HUD will provide HCD the Authority to Use Grant Funds to document their approval after any applicable public objection period expires. HCD will provide you a copy of the HUD-executed form and a letter documenting environmental approval.

After you receive your copy of the Authority to Use Grant Funds form, you may begin the HOME activity (e.g. construction, rehabilitation, down payment assistance, site acquisition, etc.) if no other HOME Program conditions exist.

IV. Continuing Programs

When HOME funds are added to a previously approved HUD-assisted project or program, a second environmental review may be unnecessary.

If the proposed program activity is an ongoing HOME activity in which the nature, area, magnitude or extent of the project or program have not changed, no new activities have been added, and no conditions have changed, a Continuation Statement (Appendix V-A2) may be placed in the environmental file to state that no new circumstances or environmental conditions exist which may affect the project, or have a bearing on its impacts. This Statement will validate the existing environmental review for the current project or program and meet NEPA requirements. However, if an NOI/RROF was originally required, then a new NOI/RROF must be disseminated and/or published announcing the additional federal funds. No republication of a FONSI notice is required. The Statement allows for the continuance and acceptance of the tiered area wide review. Site-specific reviews, however, must still be completed for all new individual projects.

Keep in mind that all original environmental reviews on which the Statement is basing its conclusions must be reevaluated every three years and redone every five years.

Example 1:

A city administered a HOME-funded citywide owner-occupied housing rehabilitation program in year one. They completed the Minor Rehabilitation Environmental Review process for that year's allocation. In year two, the local jurisdiction is again HOME-funded to administer a citywide owner-occupied housing rehabilitation program.

Since there was no significant change in the scope of the proposed work from year one to year two, the local jurisdiction could complete a Continuation Statement, publish a new NOI/RROF, and place it in their environmental review file. The local jurisdiction would still be responsible for completion and submittal of MRER Appendix A for each identified house proposed to be assisted with new HOME funds.

Example 2:

A CHDO is the developer of a self-help single-family new construction subdivision. A portion of the subdivision was included in a previous Environmental Assessment (EA) and construction began in year one. The second phase of the development received HOME funds and construction will continue the subsequent year. The EA did not include the second phase.

Since the scope of the original EA did not include the second phase of the development, another EA and required public notices must be prepared.

If the original EA included the second phase of the development, then a Continuation Statement may be prepared in lieu of another EA. A new NOI/RROF must be prepared if the original notice did not include the possibility of additional HOME funds.

Example 3:

The city is using their HOME funds to assist in the down payment assistance of new homebuyers in a new construction subdivision of 100 homes. The subdivision received CDBG funds to finance the water infrastructure. The EA, public notice requirements, and all CDBG financed work are completed. The entire subdivision was included in the scope of the EA. However, the proposed action identified in the EA only discussed the impact of the water infrastructure construction. The city plans to begin the housing construction in 4 months.

Although the EA included the entire subdivision in its area of consideration, the EA did not discuss the broader impact of the construction of single-family homes. To conduct the proper NEPA review, the city must aggregate all proposed actions regardless of whether the cost is paid by federal funds. Consequently, the city must prepare a revised EA to assess the impact of the construction of the single-family homes, and complete the public notice requirements to discuss the single-family construction and infusion of HOME funds.

A Continuation Statement is not permissible in this scenario because the original scope of review was too limited in its description of the proposed action. In addition, the city cannot claim the Categorical Exclusion not subject to Section 58.5 level of clearance for the HOME activity. The Categorical Exclusion not subject to Section 58.5 level of clearance with respect to down payment assistance is limited to existing houses or houses “under construction” as very narrowly defined under NEPA.

Example 4:

The city uses their HOME funds to assist in first-time homebuyer down payment assistance. In year one, the city focused the HOME assistance in a specific area and limited the eligibility to the purchase of existing housing stock. In year two, the city expanded eligibility throughout the city that includes a new subdivision where the HOME-assisted houses will be newly-built after the homebuyer applies to the city’s HOME program.

In this scenario, a Continuation Statement is not permissible because the area of consideration and the type of eligible housing stock changed. An EA must be prepared analyzing the effect of the new subdivision construction.

V. Common Problems

- Historical preservation analysis was incomplete and consultation with the State Office of Historical Preservation was initiated late in the environmental process.
- Insufficient time was allowed for the environmental process to be completed.
- Project development began prior to receipt of final NEPA approval.
- Weak supporting documentation to substantiate compliance with environmental laws.
- Old versions of environmental forms are used.
- CEQA and NEPA requirements are confused.
- Related project activities have not been aggregated and included in the environmental review.
- The inappropriate level of environmental clearance was selected.
- Incorrect timing of public notices, comment, or objection periods.

- Incorrect Certifying Officer.

VI. Electronic Resources

Environmental Procedures:

For HUD procedures implementing the National Environmental Policy Act, regulations of the Council on Environmental Quality and related laws and authorities, see current edition of 24 CFR Part 58: <http://www.hud.gov/offices/cpd/energyenviro/environmen/lawsandregs/regs/part58/index.cfm#subparta>.

HUD Environmental Internet Page:

For policies, rules, links, tools, contacts, and training manual for HUD staff, see: <http://www.hud.gov/offices/cpd/energyenviro/environmen/index.cfm>.

HUD Environmental Notices, Forms, and Check sheets:

For latest edition of fillable forms and check sheets, see: HUDClips: <http://www.hudclips.org>.

For form "HUD-7015.15--Request for the Release of Funds and Certification," select "forms" and select "HUD-7" to search the list that includes 7015.15 or enter HUD-7015.15 in the search box on the forms page. The form when filled or unfilled cannot be saved, but can be printed either as a blank form or as one filled out.

For "Statutory Checklist" and "Environmental Assessment Checklist" as fillable forms in Excel, enter the name of the checklist into the search box and select. The checklist can be saved or printed either as a blank, or partially or completely filled form. For environmental notices, see: <http://www.hudclips.org>.

Environmental review:

The following electronic resources are the primary sources of information for making a determination, whenever any of the following questions need to be answered in the course of preparing environmental reviews.

- 1) Is the property located within designated coastal barrier resources?**
For HUD policy, see §58.6(c). For information about coastal barrier resources designated by the Fish and Wildlife Service of the Department of Interior, see <http://www.hud.gov/offices/cpd/energyenviro/environmen/compliance/qa/coastal.cfm>.
- 2) Is the property contaminated by toxic chemicals or radioactive materials?**

For HUD policy, see §58.5(i). For maps created by marrying HUD's Community 2020™ software to EPA databases for site-specific information about all Superfund and brownfields sites, see: <http://www.hud.gov/emaps/>.

For information on toxic releases, CERCLIS, RCRIS, landview mapping, etc., maintained by the Right-To-Know Network: <http://www.rtk.net/rtkdata.html>.

3) Is the property located within a flood hazard area or designated wetland?

For HUD policy, see §58.5(b) and §58.6(a). For special flood hazard areas, see flood insurance rate maps issued by the Federal Emergency Management Agency: <http://www.fema.gov/msc/>. For HUD floodplain management procedures, see current edition of 24 CFR Part 55: <http://www.hud.gov/offices/cpd/energyenviron/environment/lawsandregs/regs/part55/index.cfm>.

For designated wetlands, see the National Wetlands Inventory maps issued by the Fish and Wildlife Service, Department of Interior <http://wetlands.fws.gov/>. For HUD policy, see Executive Order 11990, Protection of Wetlands. For related and other hazards, see: <http://www.esri.com/hazards/makemap.html>.

4) Is the property in a location requiring flood insurance?

For HUD policy, see §58.6(a) and (b). For flood insurance rate maps issued by the Federal Emergency Management Agency, see: <http://www.fema.gov/msc>. For a community's status in the National Flood Insurance Program and dates of the current flood insurance rate maps, see <http://www.fema.gov/fema/csb.htm>.

5) Is the property located within an airport runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield?

See local airport operator for runway protection zone information. For HUD policy see, §58.6(d) and 24 CFR Part 51, Subpart D at <http://lula.law.cornell.edu/cfr/>.

6) Is the property listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, a historic district; or is a property whose area of potential effect includes a historic district or property?

For HUD policy, see §58.5(a). For the listing maintained by the National Parks Service, Department of Interior, which holds information on every property listed

in or determined eligible for the National Register of Historic Places, see: <http://www.cr.nps.gov/>. For regulations of the Advisory Council on Historic Preservation, see: <http://www.achp.gov/regs.html>. [NOTICE: A historic preservation review must be conducted by the State Historic Preservation Officer for all properties not previously determined to be eligible for or listed on the National Register of Historic Places.]

7) Is the property located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature?

See local operator of the hazardous industrial operations regarding type and volume of fuels and chemicals of an explosive or flammable nature. For HUD policy and for determining acceptable separation distance, see §58.5(i) and 24 CFR Part 51, Subpart C: <http://lula.law.cornell.edu/cfr/>.

8) Is the site noise-impacted?

For determining noise levels and acceptable noise control, first identify high noise generators and level of noise impact. For HUD policy and for determining acceptable noise levels, see §58.5(i) and 24 CFR Part 51, Subpart B: <http://lula.law.cornell.edu/cfr/>.

9) Is the project consistent with state's coastal zone management?

For HUD policy, see §58.5(c). For general information on any state's coastal zone management program, see: <http://www.ocrm.nos.noaa.gov/czm/> maintained by the National Oceanic and Atmospheric Administration, Department of Commerce.

10) Does the project affect a sole source aquifer?

For HUD policy, see §58.5(d). For sole source aquifers designated by the Environmental Protection Agency, see: <http://www.epa.gov/ogwdw/swp/ssa.html>.

11) Will the project affect an endangered species?

For HUD policy, see §58.5(e). For the Federal list of endangered and threatened wildlife and plants maintained for each county by the Fish and Wildlife Service, Department of Interior, see: <http://endangered.fws.gov/wildlife.html>.

12) Does the project affect listed wild and scenic rivers?

For listed wild and scenic rivers, see National Park Service, Department of the Interior <http://www.nps.gov/rivers/wildriverslist.html>. For HUD policy, see

58.5(f).

13) Does the project affect prime and unique farmland, or other farmland of statewide or local significance?

For HUD policy, see §58.5(h). For county maps and information provided by the Natural Resources Conservation Service, Department of Agriculture, see: <http://www.nhq.nrcs.usda.gov/land/index/prime.html>.

14) Is the project within a "non-attainment" or "maintenance" area and not in conformance with the State Implementation Plan (SIP) for clean air?

For HUD policy, see §58.5(g). For maps created by marrying HUD's Community 2020™ software to databases maintained by the Environmental Protection Agency for site-specific information air pollution: see: <http://www.hud.gov/emaps/>. For information maintained by the Environmental Protection Agency relating to State Air Programs and Offices of Attorney General providing Air Enforcement activities and data compilations, see: <http://es.epa.gov/oeca/ore/aed/links/index.html>.

15) Is the project located in a neighborhood where the proposed action is likely to raise environmental justice issues?

For HUD policy, see §58.50). For information on environmental justice maintained by the Environmental Protection Agency, see: <http://www.epa.gov/oeca/oej/t6report.pdf>. For the Right-To-Know Network information, see: <http://www.rtk.net/rtkdata.html>.

16) Is the project in compliance with the National Environmental Policy Act and implementing regulations of the Council on Environmental Quality?

For regulations of the Council on Environmental Quality implementing the National Environmental Policy Act, see: <http://ceq.eh.doe.gov/nepa/nepanet.htm>.

Other:

For lead hazard abatement, see: <http://www.hud.gov/offices/lead/>.

For topographic maps and resource information maintained by the U.S. Geological Survey, see: <http://www.usgs.gov/>.

For air, water and land use issues, the U.S. EPA offers the "Window to My Environment" program presently available for sites in the mid-Atlantic region with eventual nationwide service, see: <http://www.epa.gov/enviro/wme/>.

VII. Additional Resources

- HUD Environmental Internet website: www.hud.gov/cpd/cpdenvir.html.
- NEPA: 40 CFR Parts 1500-1508
24 CFR Part 58 (Environmental Review Procedures for
Title I CDBG Programs)
HCD Act of 1974, Section 104(h)
- Related statutes, executive orders, regulations and contacts in 24 CFR Part 58.5:
 - (a) Historic Properties.
 - (1) Advisory Council on Historic Preservation Internet website: www.achp.gov.
 - (2) California State Office of Historical Preservation Internet website: <http://ohp.parks.ca.gov/>.
 - (3) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly Section 106 (16 U.S.C. 470(f)).
 - (4) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); 3 CFR 1971-1975 Comp. , p. 559, particularly Section 2(c).
 - (5) Protection of Historic Properties (36 CFR Part 800), amended June 17, 1999 (Appendix V-B4).
 - (6) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et seq.); as amended by the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq. particularly Section 3 (16 U.S.C. 469a-1).
 - (7) California Historical Resources Information System (CHRIS) Internet website: www.chris.ca.gov.
 - (b) Floodplain Management and Wetland Protection.
 - (1) Federal Emergency Management Agency, National Flood Insurance Program Internet website: www.fema.gov/nfip/

- (2) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.) as amended; particularly Sections 102(a) and 202(a) (42 U.S.C. 4012a(a) and 4106(a)).
- (3) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 et seq.); as interpreted in HUD regulations at 24 CFR Part 55, particularly Section 2(a).
- (4) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.); 3 CFR, 1977 Comp., p. 121, particularly Sections 2 and 5.
- (5) Environmental Fact Sheet for Floodplain Management and Flood Disaster Protection Act of 1973, May 1994.
- (6) Implementing Regulations for Floodplain Management (24 CFR Parts 50, 55, 58, and 200). Internet website: <http://lula.law.cornell.edu/cfr/>.
- (c) Coastal Zone Management. The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) as amended; particularly Section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).
- (d) Sole Source Aquifers.
 - (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly Section 1424(e) (42 U.S.C. 300(h)-3(e)).
 - (2) Sole Source Aquifers (Environmental Protection Agency – 40 CFR Part 149).
- (e) Endangered Species. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended; particularly Section 7 (16 U.S.C. 1536).
- (f) Wild and Scenic Rivers. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended; particularly Section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).
- (g) Air Quality.
 - (1) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended; particularly Section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

- (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency – 40 CFR Parts 6,51, and 93).
- (h) Farmlands Protection.
 - (1) Farmlands Protection Act of 1981 (7 U.S.C 4201 et seq.) as amended; particularly Sections 1540(b) and 1541 (7 U.S.C. 4201 (b) and 4202).
 - (2) Farmland Protection Policy (Department of Agriculture – 7 CFR Part 658).
- (i) HUD Environmental Standards. Applicable Environmental Criteria and Standards (24 CFR Part 51), as specified.
- (j) Environmental Justice. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.
- CEQA: California Public Resources Code,
Division 13, Chapters 1, 2, 2.5, 2.6, 3, 4, 5 and 6
California Administrative Code,
Title 14, Division 6, Chapter 3
- Environmental Resources List – Region IX (Appendix V-A15)